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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANTON BELEVICH, individually, and
on behalf of all others similarly situated

Plaintiff,

vs.

BANK OF AMERICA NATIONAL
ASSOCIATION, BANK OF AMERICA
N.A., BANK OF AMERICA
NATIONAL ASSOC
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 2:15-cv-9171-PSG(JPRx)

**PLAINTIFF'S NOTICE OF
MOTION AND MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL**

Date: July 31, 2017
Time: 1:30 p.m.

**Hon. Philip S. Gutierrez
Courtroom 6A**

1 TO ALL PARTIES AND ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on Monday, July 31, 2017 at 1:30 p.m. in
3 Courtroom 6A, located at First Street Courthouse, 350 West 1st Street, 6th Floor, Los
4 Angeles, California 90012, before the Honorable Philip S. Gutierrez of the United
5 States District Court, Central District of California, Plaintiff Anton Belevich moves
6 the Court for preliminary approval of the JOINT STIPULATION FOR CLASS
7 ACTION SETTLEMENT AND RELEASE OF CLAIMS (attached as **Exhibit 1** to
8 the Declaration of Matthew Righetti and referred to herein as the “Settlement
9 Agreement”). In particular, Plaintiff moves for orders:

10 **As to the Plaintiff Class:**

- 11 (1) granting preliminary approval of the Settlement Agreement;
- 12 (2) conditionally certifying the Settlement Class for settlement purposes;
- 13 (3) approving the Notice of Proposed Class Action Settlement (“Class Notice”)
14 and Claim Form (attached as **Exhibits A and B** to the Settlement Agreement);
- 15 (4) preliminarily appointing and approving Matthew Righetti and Michael Righetti
16 of Righetti Glugoski, P.C. as Counsel for the Class;
- 17 (5) preliminarily appointing and approving the named Plaintiff as Class
18 Representative;
- 19 (6) preliminarily appointing and approving Kurtzman Carson Consultants
20 (“KCC”) as the Settlement Administrator; and
- 21 (7) authorizing the Settlement Administrator to mail the approved Class Notice to
22 the Settlement Class.

23 This Motion is based on this notice, the following Memorandum of Points and
24 Authorities, the Declaration of Matthew Righetti (“Righetti Decl.”), and all other
25 records, pleadings, and papers on file in this action and such other evidence or
26 argument as may be presented to the Court at the hearing on this Motion.

27 Accompanying this Motion is also Plaintiff’s Proposed Order Granting Preliminary
28 Approval of Settlement.

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I. INTRODUCTION

Plaintiff seeks preliminary approval of the Joint Stipulation for Class Action Settlement and Release of Claims (hereinafter referred as the “Settlement” or “Settlement Agreement”). Plaintiff, Anton Belevich, and Defendant, Bank of America National Association (“BANA”), collectively referred to herein as “the Parties,” have agreed to resolve numerous wage and hour claims pertaining to meal period entitlement and premium meal period wages, which were unlikely to have been prosecuted as individual actions. In doing so, Plaintiff submits that the Settlement Agreement provides substantial benefit to the members of the Plaintiff Class, which includes approximately 7,310 BANA Personal Bankers/Relationship Managers employed by Defendant in California from September 21, 2011 through December 31, 2016. The total settlement amount is \$6,000,000.00. This settlement is fair, reasonable, and adequate in all respects, as further demonstrated herein.

Plaintiff pursued this class action on behalf of Personal Bankers, whose titles were later changed by Defendant to Relationship Managers, working at BANA retail branches in California. It is based on Defendant’s alleged violations of California labor laws pertaining to meal periods, specifically, the alleged failure to provide one hour of meal period premium pay on days when Personal Bankers were not able to start their meal periods before the end of the fifth hour of their shift. Following hard-fought litigation that included 1) extensive formal discovery; 2) discovery disputes that resulted in a stipulation and order from the Court; 2) substantial motion practice including the filing of Defendant’s motion for summary judgment and the filing of Plaintiff’s motion for class certification; and 3) further informal discovery, the parties attended a mediation before Phyllis Cheng – an experienced and respected Central District panel mediator. The parties did not reach a settlement at the mediation; however, after further arm’s-length negotiations between counsel and Ms. Cheng, the Parties assented to the terms of Ms. Cheng’s mediator’s proposal. The proposed Settlement falls well within the range of reasonableness and satisfies the criteria for

1 approval under federal law. Accordingly, Plaintiff requests that the Court
 2 preliminarily approve the Settlement Agreement.

3 **II. BACKGROUND AND OVERVIEW OF THE SETTLEMENT**

4 **A. Procedural Background**

5 On September 21, 2015, Plaintiff Anton Belevich filed *Anton Belevich v. Bank*
 6 *of America, N.A.*, Case No. Case No. BC595333, in the Los Angeles County Superior
 7 Court. Plaintiff filed a First Amended Complaint (“FAC”) on October 23, 2015, and
 8 a Second Amended Complaint (“SAC”) on January 25, 2016.

9 In the putative class action Complaint, FAC, and SAC, Plaintiff alleged claims
 10 for (1) failure to provide meal periods under Cal. Labor Code §§ 226.7 and 512, (2)
 11 failure to provide compliant itemized wage statements under Cal. Labor Code § 226,
 12 (3) waiting time penalties under Labor Code §§ 201-203, (4) unfair competition
 13 under Cal. Bus. & Prof. Code § 17200, et. seq., and (5) penalties under the Private
 14 Attorney General Act (“PAGA”), Labor Code § 2698 et seq.

15 The Complaint, FAC, and SAC sought certification of a putative class
 16 composed of all non-exempt “personal bankers” employed by Defendant in
 17 California who were allegedly denied meal periods, compliant wage statements, and
 18 waiting time penalties within the statutory time period. The Complaint, FAC, and
 19 SAC seek relief including unpaid meal period premiums, wage statement penalties,
 20 waiting time and penalties pursuant to the Private Attorneys General Act, interest,
 21 and attorney’s fees and costs. The Complaint, FAC, and SAC, and all claims that
 22 have been made therein, are referred to herein as the “Lawsuit.”

23 On November 25, 2015, Defendant removed the Lawsuit to the United States
 24 District Court, Central District of California, pursuant to 28 U.S.C. 1332(a)(1)
 25 (traditional diversity) and 28 U.S.C. 1332 and 1441 (the Class Action Fairness Act).
 26 On December 18, 2015, Plaintiff moved to remand the Lawsuit to state court. See
 27 Dkt. # 12. The Court denied the motion to remand on March 3, 2016, finding that it
 28 has subject matter jurisdiction over this case. See Dkt. # 26.

1 On February 11, 2016, Defendant moved to dismiss the Second Amended
2 Complaint. On April 11, 2016, the Court granted the motion with respect to
3 Plaintiff's Second Claim for Relief, for alleged inaccurate itemized wage statements.
4 The Court otherwise denied the motion. See Dkt. #35. On May 13, 2016, Defendant
5 moved for reconsideration of the portion of the Court's order denying the Motion to
6 Dismiss the Second Amended Complaint. See Dkt. #38. The Court denied the
7 motion on July 8, 2016. See Dkt. #43. Thereafter, Defendant answered the SAC,
8 and the parties commenced discovery.

9 **B. Discovery Completed**

10 The Parties engaged in formal written discovery. Each party propounded
11 requests for production of documents and special interrogatories. Each party
12 prepared responses to the written discovery and produced documents. Additionally,
13 the parties participated in an informal exchange of extensive documents and
14 information, including Defendant's policies and procedures regarding meal periods
15 and timekeeping, data regarding the size of the putative meal period class, the number
16 of shifts where timekeeping and payroll records show timely meal periods of at least
17 30 minutes were not taken by putative class members, the average hourly rate of pay
18 for each putative class member for the instances when they recorded a meal period
19 starting later than the end of their fifth hour of work, the termination dates (if
20 applicable) of each putative class member, the final hourly rate of pay at the time of
21 termination for terminated putative class members, and information regarding
22 whether each putative class member has a severance agreement, or was a class
23 member of a prior lawsuit against the Defendant who might have resolved meal
24 period or waiting time penalty claims pursuant to settlements and releases executed in
25 those lawsuits. Decl. of Matthew Righetti.

26 During pre-certification discovery, a discovery dispute arose regarding (1)
27 Defendant's production of the identities and contact information for putative class
28 members and (2) Defendant's production of time records and/or payroll records for

1 putative class members. After extensive meet and confer efforts, both in person,
 2 during teleconferences and written exchanges the parties were able to resolve the
 3 dispute by stipulating to certain facts about what the records might show, which is
 4 documented in a Joint Stipulation and Order. See Docket #58. The parties also
 5 stipulated to send a letter (a so-called *Bel-Aire* notice) to a subset of putative class
 6 members giving them the chance to opt out of having Defendant produce their
 7 contact information to Plaintiff's counsel. *Id.*

8 Two depositions were taken in the case. Defendant deposed Plaintiff on
 9 September 27, 2016, and Plaintiff took the deposition of Defendant via Fed. Rule of
 10 Civ. Proc. 30(b)(6) on December 15, 2016. At the time the parties reached a
 11 settlement, a third deposition (a percipient defense witness) was on calendar to take
 12 place in Seattle, Washington. Righetti Decl.

13 **C. Motion Practice**

14 This case involved a substantial amount of motion practice, most of which is
 15 described above in the Procedural Background section. In addition, Defendant filed a
 16 motion for summary judgment or in the alternative partial summary judgment (See
 17 Docket #59), and Plaintiff filed a motion for class certification (See Docket #60).

18 **D. Mediation**

19 After Defendant filed its motion for summary judgment and after Plaintiff filed
 20 his motion for class certification, the Parties mutually agreed to participate in the
 21 mediation process. The Parties elected to use the Central District panel mediator
 22 assigned to the case, Phyllis Cheng, and the Parties engaged in mediation with Ms.
 23 Cheng on April 4, 2017. The Parties did not reach a settlement at the mediation.
 24 However, the mediator made a settlement proposal, which the parties both
 25 subsequently accepted. The Parties fully executed a Memorandum of Understanding
 26 on April 11, 2017. Thereafter, the parties negotiated and executed a comprehensive
 27 settlement agreement. A true and correct copy of the Joint Stipulation for Class
 28

1 Action Settlement and Release of Claims is attached to the Righetti Decl. as Exhibit
2 1.

3 **E. Damages Analysis**

4 Class Counsel based their damages analysis and settlement negotiations on the
5 formal and informal discovery, interviews and declarations discussed above,
6 including the payroll and timekeeping data of all 7,310 Plaintiff Class Members
7 produced by Defendant in an Excel spreadsheet. The spreadsheet contained data
8 regarding the average hourly rate for the Plaintiff Class Member based on the precise
9 hourly rate during each day that s/he recorded a late meal period. The spreadsheet
10 also included the total number of days each Plaintiff Class Member recorded a late
11 meal period, and the number of pay periods during the year preceding the filing date
12 to the present that a late meal period was recorded for each Plaintiff Class Member.
13 The spreadsheet also contained data regarding whether the Plaintiff Class Member
14 was a current or former employee, and whether each Plaintiff Class Member had
15 signed a severance agreement or had executed a release by virtue of participation in
16 other litigation.

17 Plaintiffs' Counsel made several factual and legal assumptions to determine
18 Defendant's total exposure to the Plaintiff Class Members' claims. For example, in
19 determining Defendant's total exposure, Plaintiff *assumed* that for each meal period
20 recorded after the end of the fifth hour of work, the Plaintiff Class Members did not
21 voluntarily choose to take his/her meal period after the end of the fifth hour of work.
22 In other words, Plaintiff *assumed* that Defendant did not provide the Plaintiff Class
23 Members with the opportunity to take a timely meal period on days when a late meal
24 period was reflected in the time records. Of course, whether Settlement Class
25 Members voluntarily chose to take a meal period late versus whether Defendant
26 prevented Plaintiff Class Members from timely meal periods was the quintessential
27 dispute in this case – a disputed issue that also posed the greatest hurdle Plaintiff
28 faced in achieving class certification. *See, Nicole Torres et al. v. Wells Fargo Bank,*

1 N.A. *et al*, Case No. 5:15-cv-2225 PSG (KKx), Order DENYING Motion for Class
 2 Certification, March 21, 2017, a copy of which is attached to the Righetti Decl. as
 3 Exhibit 2.

4 **1. Defendant's Exposure to Meal Period Violations**

5 The time records produced by Defendant for Personal Bankers/Relationship
 6 Managers showed that during the class period, Personal Bankers/Relationship
 7 Managers recorded 381,223 meal periods that began after the end of the fifth hour of
 8 work. The product of these 381,223 meal periods times the average hourly rate of
 9 \$19.97 equals \$7,613,023.31, which is Defendant's approximate total exposure to the
 10 claims assuming all Personal Bankers and all meal periods that began after the end of
 11 the fifth hour are included.¹

12 However, Defendant also produced data about the Plaintiff Class Members that
 13 impacted their exposure to the downside, such as (1) participation in other class
 14 action settlements that potentially released claims for meal period violations, waiting
 15 time penalties and/or inaccurate pay stub claims or (2) the existence of a severance
 16 agreement releasing claims alleged herein. Defendant identified previous class
 17 action settlements that released overlapping claims in this case, which of course
 18 reduced BANA's exposure to the Plaintiff Class Members' claims. The first is *In Re:*
 19 *Bank of America Wage and hour Employment Litigation*, Case No. 10-MD-2138-
 20 JWL (Dist. of Kansas). A true and correct copy of the Order Approving Settlement is
 21 marked and attached to the Righetti Decl. as Exhibit 3. The MDL settlement released
 22 all meal and rest period claims, inaccurate pay stub claims, and waiting-time penalty
 23 claims for participating class members through December 18, 2013. *Id.* The second
 24 class action settlement that impacted Defendant's exposure to Plaintiff's class claims

26 ¹ Defendant asserts that it always provided Plaintiff and Personal Bankers the opportunity to take
 27 meal periods before the end of the fifth hour of work. Thus, even if a meal period was "late,"
 28 Defendant denies that necessarily violates the law, as Personal Bankers could voluntarily begin
 their meal period after the end of the fifth hour.

1 is *Garibaldi v. BANA*, Case No. 3:13-CV-02223-SI, Northern Dist. of California. A
 2 true and correct copy of the Order Granting Final Approval of Settlement in that
 3 action is attached to the Righetti Decl. as Exhibit 4. The *Garibaldi* settlement
 4 released waiting time penalties and inaccurate pay stub claims for Personal Bankers
 5 through December 31, 2014. *Id.*

6 Given these class action settlements and severance agreements and their impact
 7 on Defendant's exposure to Plaintiff's class claims, Defendant provided supplemental
 8 data that reflected 274,251 meal periods that began after the end of the fifth hour that
 9 fall outside of the period covered by a settlement release or severance agreement.
 10 Plaintiff estimates Defendant's exposure to the meal period claim by multiplying
 11 274,251 times the average rate of pay for Plaintiff Class Members (\$19.97), which
 12 equals **\$5,476,792.47** (**\$19.97 x 274,251**).

13 **2. Waiting Time Penalties**

14 Data produced by Defendant showed that of the approximately 7,310 Personal
 15 Bankers, approximately 3,100 of them are former employees with potential waiting
 16 time penalties claims. Of those 3,500 former employees, Defendant's data showed
 17 that 1,800 of them were class members in either the *Garibaldi* or *Pineda* actions and
 18 whose employment ended prior to December 31, 2014, and were thus subject to a
 19 release that included waiting time penalties. Thus, Defendant's total potential
 20 exposure to waiting time penalties in this case is approximately **\$8,147,760.00**,
 21 calculated as follows: 1,700 former class members x \$19.97 x 8 hours x 30 days.

22 **3. Penalties Pursuant to the Private Attorneys' General Act**

23 Data produced by Defendant included the total number of pay periods worked
 24 by putative class members during the year preceding the filing date of the complaint
 25 to the present during which putative class members recorded beginning a meal period
 26 after the end of the fifth hour of work. The total number of pay periods was
 27 approximately 70,000. The PAGA provides for a civil penalty of between \$100 for
 28 each aggrieved employee per pay period for the initial violation and \$200 for each

1 aggrieved employee per pay period for subsequent violations (Cal. Lab. Code Section
 2 2699(f)(2)). Thus, if the Court were to assess the maximum penalty as an initial
 3 violation for all pay periods, the maximum penalty would be \$7,000,000.00. If the
 4 Court were to assess the maximum penalty (\$200) for all subsequent pay periods, and
 5 \$100 for the initial pay period, the maximum penalty would be approximately
 6 \$13,999,900.00.

7 **III. TERMS OF THE SETTLEMENT**

8 **A. Basic Terms**

9 BANA has agreed to pay a total of \$6,000,000.00 (“Gross Settlement Fund”)
 10 to settle all aspects of the case. The Net Settlement Fund, i.e. the amount available to
 11 pay Settlement Class Members (i.e. all Plaintiff Class Members who do not opt out of
 12 the settlement), is defined as the Gross Settlement Fund minus the amount of any
 13 attorneys’ fees and costs awarded to Class Counsel by the Court, the amount of any
 14 enhancement payment awarded to the Class Representative by the Court, the amount
 15 of the payment made to the LWDA pursuant to PAGA, and the amount of court-
 16 approved Claims Administrator’s fees and costs.

17 Pursuant to the agreement, Plaintiff may file a motion for reasonable attorneys’
 18 fees up to 25% of the Gross Settlement Fund (i.e. \$1,500,000.00), which BANA will
 19 not oppose so long as the request is no more than 25% of the Gross Settlement Fund.
 20 Plaintiff will also request reimbursement of litigation costs of no more than
 21 \$18,500.00.

22 Plaintiff shall also request a Class Representative enhancement up to
 23 \$10,000.00 for Plaintiff’s work in connection with the case. Plaintiff initiated the
 24 action and played a vital role throughout the litigation. Plaintiff cooperated in all
 25 aspects of the discovery process, responded to questions, produced documents,
 26 provided a full day of deposition testimony and attended the mediation. Mr. Belevich
 27 evaluated the proposed settlement, and at all times he put the interests of the Plaintiff
 28

1 Class Members ahead of his own. Decl. of Michael Righetti and Decl. of Anton
2 Belevich.

3 The Settlement Agreement allocates \$25,000.00 of the Gross Settlement Fund
4 to the settlement of the PAGA claims alleged in the case. The administrator shall pay
5 seventy-five percent (75%) of the \$25,000.00 (or \$18,750.00) of this amount to the
6 LWDA, and the remaining 25% (or \$6,250.00) shall be distributed to the Net
7 Settlement Fund for distribution to Settlement Class Members who participate in the
8 settlement.

9 Finally, the costs incurred by the Claims Administrator will be paid out of the
10 Gross Settlement Fund. The parties have selected KCC, who has estimated that that
11 it will cost \$39,000 to complete all work associated with administering the
12 settlement.

13 **B. Class Definitions**

14 An individual is a member of the Plaintiff Class if he or she belongs to the
15 following defined group:

- 16 ■ All persons, who, from September 21, 2011 through December 31, 2016, worked
17 for Bank of America in the State of California as a Personal Banker or
18 Relationship Manager.

19 **C. Allocation and Awards**

20 All members of the Plaintiff Class who do not exclude themselves from the
21 settlement, i.e. Settlement Class Members, shall be entitled to submit a Claim Form
22 and receive their pro rata share of the Net Settlement Fund. Each Settlement Class
23 Member's settlement share will be determined based on his/her respective number of
24 weeks during the Class Period that they actively worked. The Net Settlement Fund
25 shall be divided by the total number of qualifying work weeks worked by members of
26 the Plaintiff Class during the Class Period. The resulting amount will be the amount
27 of dollars per qualifying work week to which each Plaintiff Class Member will be
28 entitled. The number of Qualifying Work Weeks worked by each individual member

1 of the Plaintiff Class multiplied by the dollar amount per workweek shall comprise
 2 their Individual Settlement Share. This formula was devised as being not only
 3 equitable, but also as a practical and logistical tool to simplify the claims process.

4 **D. Scope of Release and Final Judgment**

5 Upon the final approval by the Court of this Settlement Agreement, and except
 6 as to such rights or claims as may be created by this Settlement Agreement, all
 7 members of the Settlement Class, regardless of whether that member submitted a
 8 timely Claim Form, fully release and discharge Defendant and Defendant's present
 9 and former parent companies, subsidiaries, shareholders, officers, directors,
 10 employees, agents, affiliates, servants, registered representatives, attorneys, insurers,
 11 successors and assigns ("Releasees"), from any and all individual and class claims,
 12 debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses,
 13 attorneys' fees, damages, action or causes of action of whatever kind or nature,
 14 whether known or unknown, that were alleged in the Lawsuit, including, but not
 15 limited to any claims under federal or state law that are alleged in the Second
 16 Amended Complaint, i.e., that Defendant failed to properly provide meal periods
 17 and/or pay meal period premiums (the "Released Claims"). The Released Claims
 18 shall include claims under California state law for alleged failure to provide meal
 19 periods or pay meal period premiums in lieu thereof, failure to pay all wages due
 20 upon termination, failure to timely furnish accurate itemized wage statements,
 21 engaging in unfair business practices related to the Released Claims, and for any
 22 statutory or civil penalties under any statute, ordinance, related to the Released
 23 Claims, including, without limitation, Cal. Lab. Code §§ 203, 226 and 2698, et seq.
 24 The release of claims for waiting-time penalties and inaccurate itemized wage
 25 statements penalties shall encompass such claims regardless of the underlying theory.
 26 The Parties stipulate that beyond the Gross Settlement Fund, Defendant shall not owe
 27 any further monies to the Class Representative, Settlement Class, or to Class Counsel
 28 based upon the Released Claims.

1 **E. Settlement Administration**

2 The Parties have agreed to use KCC to administer the Settlement. KCC has
 3 submitted a bid to complete all work associated with administering the settlement.
 4 The total amount of that bid is \$39,000. Righetti Decl., Exhibit 5. KCC will, among
 5 other things, distribute the Class Notice, calculate individual settlement payments,
 6 calculate all applicable payroll taxes, withholdings and deductions, preparing and
 7 issuing all disbursements to be paid to Class members, Class Counsel, the LWDA,
 8 any applicable local, state, and federal tax authorities, and handling inquiries and/or
 9 disputes from CMs. KCC is also responsible for the timely preparation and filing of
 10 all tax returns, and making the timely and accurate payment of any and all necessary
 11 taxes and withholdings. KCC will also establish a mailing address and toll-free
 12 telephone number to direct inquiries regarding the Notices and determination of
 13 individual settlement payments.

14 **IV. ARGUMENT**

15 **A. The Court Should Grant Preliminary Approval of the Settlement as**
 16 **to the California Class under Rule 23.**

17 A certified class action may not be settled without approval of the Court. *See*
 18 *FED. R. CIV. P. 23(e)*. Review and approval of a class action settlement requires three
 19 steps: (1) preliminary approval of the proposed settlement upon a written motion; (2)
 20 dissemination of notice of the settlement to all class members; and (3) a final
 21 settlement approval hearing at which objecting class members may be heard, and at
 22 which evidence and argument concerning the fairness, adequacy, and reasonableness
 23 of the settlement is presented. *Manual for Complex Litigation* (4th ed. 2004), §
 24 21.61. The decision to approve or reject a proposed settlement is committed to the
 25 sound discretion of the court. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027
 26 (9th Cir. 1998). Rule 23 requires that all class action settlements satisfy two primary
 27 prerequisites before a court may grant certification for purposes of preliminary
 28 approval: (1) that the settlement class meets the requirements for class certification if

1 it has not yet been certified (FED.R.CIV. P. 23(a),(b); *Hanlon*, 150 F.3d at 1020); and
 2 (2) that the settlement is fair, reasonable, and adequate (FED.R.CIV.P. 23(e)(2)).

3 This class action settlement satisfies the requirements of Rule 23(a) and (b),
 4 and it is fair, reasonable, and adequate in accordance with Rule 23(e)(2).

5 Accordingly, the Court should preliminary approve the settlement as to the Class.

6 **B. The Court Should Conditionally Certify the California Class.**

7 A class may be certified under Rule 23 if (1) the class is so numerous that
 8 joinder of all members individually is “impracticable”; (2) questions of law or fact
 9 are common to the class; (3) the claims or defenses of the class representative are
 10 typical of the claims or defenses of the class; and (4) the person representing the class
 11 is able to fairly and adequately protect the interests of all members of the class. FED.
 12 R. Civ. P. 23(a). Furthermore, Rule 23(b)(3) provides that a class action seeking
 13 monetary relief may only be maintained if “the court finds that the questions of law
 14 or fact common to class members predominate over any questions affecting only
 15 individual members, and that a class action is superior to other available methods for
 16 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

17 Applying this standard, numerous cases similar to this case have certified classes of
 18 retail employees who have suffered wage and hour violations under California law.
 19 *See, e.g., Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695
 20 (N.D. Cal. Nov. 12, 2014) (certifying California Rule 23 class in a case ascertaining
 21 similar wage and hour violations for non-exempt, hourly employee working as Sales
 22 Associates and Assistant Managers). Likewise, the Plaintiff Class meets all of these
 23 requirements.

24 **1. The Class is numerous and ascertainable.**

25 The numerosity prerequisite demands that a class be large enough that joinder
 26 of all members would be impracticable. FED.R.CIV.P. 23(a)(1). While there is no
 27 exact numerical cut-off, courts have routinely found numerosity satisfied with classes
 28 of at least forty members. *See, e.g., Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258,
 262 (S.D. Cal. 1988); *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 485

(E.D. Cal. 2006). Here, the proposed Settlement includes over 7,000 employees, which satisfies the numerosity requirement.

2. Plaintiffs' claims raise common issues of fact or law.

The commonality requirement of FED. R. CIV. P. 23(a)(2) "is met if there is at least one common question or law or fact." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000). Rule 23(a)(2) has been construed permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). Plaintiff "need not show that every question in the case, or even a preponderance of questions, is capable of classwide resolution . . . a single common question" satisfies commonality. *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538 (9th Cir. 2013)).

Common questions of law and fact predominate thereby satisfying paragraphs (a)(2) and (b)(3) of Rule 23, as alleged in the operative complaint. Defendant has uniform policies applicable to all Personal Bankers/Relationship Managers. Plaintiff and Defendant have stipulated to several facts that support Plaintiff's contention that common question of law and fact predominate, e.g. (1) the fact that Defendant's time records for Plaintiff Class Members reflect meal periods that begin after the end of the fifth hour of work, and (2) prior to January 2017, Defendant did not have any mechanism in place to automatically investigate meal periods that began after the end of the fifth hour of work to determine if an additional hour of premium pay should be paid. See Dkt. # 56. Because Plaintiff claims that Plaintiff Class Members' entitlement to premium meal period wages can be resolved at the same juncture, Plaintiff contends the commonality requirement is satisfied for the Plaintiff Class.

3. Plaintiff's claims are typical of the claims of the Class.

"Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of the members of the class." *Fry*, 198 F.R.D. at 468. "Under the rule's permissive standards, a representative's claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially

identical.” *Hanlon*, 150 F.3d at 1020. To satisfy the requirement of typicality, “a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 156 (1982). Here, Plaintiff’s claims are typical of those of all other Plaintiff Class Members. Plaintiff’s time records and payroll records confirm that, on several occasions, he took meal periods that commenced after the end of his fifth hour of work and was never compensated any additional premium pay. Plaintiff’s counsel’s interviews of Plaintiff Class Members and review of timekeeping and payroll data also confirm that other Personal Bankers/Relationship Managers throughout California recorded meal periods that began after the end of their fifth hour of work but did not receive additional premium pay. Thus, this requirement is also satisfied.

4. Plaintiff and Class Counsel will adequately represent the Class.

To meet the adequacy of representation requirement in FED. R. CIV. P. 23(a)(4), Plaintiff must show “(1) that the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously; (2) that he or she has obtained adequate counsel, and (3) that there is no conflict between the individual's claims and those asserted on behalf of the class.” *Fry*, 198 F.R.D. at 469. Plaintiff’s claims are not antagonistic to the claims of members of the putative Class. There is no conflict between Plaintiff and the Plaintiff Class in this case; Plaintiff’s claims are in line with the claims of the class. Plaintiff has prosecuted this case with the interests of the Plaintiff Class in mind. Moreover, Class Counsel has extensive experience in class action and employment litigation, including wage and hour class actions, and do not have any conflict with the class. Righetti Decl.

5. The Rule 23(b)(3) requirements for class certification are also met.

Under Rule 23(b)(3), Plaintiff must demonstrate that common questions “predominate over any questions affecting only individual members” and that a class

1 action is “superior to other available methods for fairly and efficiently adjudicating
 2 the controversy.” “The predominance analysis under Rule 23(b)(3) focuses on ‘the
 3 relationship between the common and individual issues’ in the case and ‘tests
 4 whether proposed classes are sufficiently cohesive to warrant adjudication by
 5 representation.’” *Wang, supra*, 737 F.3d at 545 (9th Cir. 2013).

6 Here, Plaintiff contends the common questions raised in this action
 7 predominate over any individualized questions concerning the Plaintiff Class. The
 8 Class is entirely cohesive because resolution of Plaintiff’s claims all hinge on the
 9 uniform policies and practices of Defendant, rather than any treatment the Plaintiff
 10 Class Members experienced on an individual level. As a result, the resolution of these
 11 alleged class claims will be resolved through the use of common forms of proof, such
 12 as Defendant’s uniform policies (including Defendant’s California-wide change in
 13 policy after the litigation commenced) and will not require inquiries specific to
 14 individual class members.²

15 Further, Plaintiff contends the class action mechanism is a superior method of
 16 adjudication compared to a multitude of individual suits. To determine whether the
 17 class approach is superior, courts are to consider: (A) the class members’ interests in
 18 individual controlling the prosecution or defense of separate actions; (B) the extent
 19 and nature of any litigation concerning the controversy already begun by or against
 20 class members; (C) the desirability or undesirability of concentrating the litigation of
 21 the claims in the particular forum; and (D) the likely difficulties in managing a class
 22 action. FED.R.CIV.P. 23(b)(3)(A)-(D). Here, the Class members do not have a strong
 23 interest in controlling their individual claims. If the Class members proceeded on
 24 these claims as individuals, their many individual suits would require duplicative

25 ² Although the amount of time worked off-the-clock and number of missed meal and rest periods
 26 may vary, these are damages questions and should not impact class certification. *Yokoyama v.*
 27 *Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010). The fact that individual inquiry
 28 might be necessary to determine whether individual employees were able to take breaks despite the
 defendant’s allegedly unlawful policy is not a proper basis for denying certification. *Benton v.*
Telecom Network Specialists, Inc., 220 Cal.App.4th 701 (Cal. Ct. App. 2014).

1 discovery and duplicative litigation. In contrast, the class action mechanism would
 2 efficiently resolve numerous substantially identical claims at the same time while
 3 avoiding a waste of judicial resources and eliminating the possibility of conflicting
 4 decisions from repetitious litigation. Manageability is not a concern in the settlement
 5 context. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 593 (1997). Accordingly,
 6 class treatment is superior to individual treatment as a method for adjudicating the
 7 claims in this action.

8 **C. The Settlement Should Be Preliminarily Approved as to the Class**
 9 **and Finally Approved as to the Collective Because It Is Fair,**
 10 **Reasonable, and Adequate.**

11 In deciding whether to approve a proposed class action settlement, the Court
 12 must find that the proposed settlement is “fair, reasonable, and adequate.” Fed. R.
 13 Civ. P. 23(e)(2); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th
 14 Cir. 1982). Included in this analysis are considerations of: (1) the strength of the
 15 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further
 16 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
 17 amount offered in settlement; (5) the extent of discovery completed and the stage of
 18 the proceedings; (6) the experience and views of counsel; (7) the presence of a
 19 governmental participant; and (8) the reaction of the class members to the proposed
 20 settlement. *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)
 21 (citing *Hanlon*, 150 F.3d at 1026). Importantly, courts apply a presumption of
 22 fairness “if the settlement is recommended by class counsel after arm’s-length
 23 bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL
 24 1230826, at *6 (N.D. Cal. Apr. 1, 2011). There is also “a strong judicial policy that
 25 favors settlements, particularly where complex class action litigation is concerned.”
 26 *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). In light of these
 27 factors, the proposed settlement is fair, reasonable, and adequate.

28 **1. The terms of the Settlement are fair, reasonable, and**
adequate.

1 In evaluating the fairness of a proposed settlement, courts compare the
 2 settlement amount with the estimated maximum damages recoverable in a successful
 3 litigation. *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.2000).
 4 Courts routinely approve settlements that provide a fraction of the maximum
 5 potential recovery. *See, e.g., Officers for Justice v. Civil Serv. Comm'n of San*
 6 *Francisco*, 688 F.2d 615, 623 (9th Cir. 1982).³ A review of the Settlement
 7 Agreement reveals the fairness, reasonableness, and adequacy of its terms. The Net
 8 Settlement Amount of \$4,410,724.00, derived from a Gross Settlement Amount of
 9 \$6,000,000.00, will result in fair and just relief to Settlement Class Members.
 10 Payments to the Settlement Class members are roughly 22% of the maximum total
 11 damages and penalties attainable in this case, and the maximum total damages
 12 assumes that every single meal period in the record that began after the end of the
 13 fifth hour of work warranted the payment of an additional hour of premium, which is
 14 a rather grandiose assumption for purposes of calculating realistic exposure. Thus, the
 15 result is well within the reasonable standard when considering the difficulty and risks
 16 presented by pursuing further litigation. Furthermore, the final settlement amount
 17 takes into account the substantial risks inherent in any class action wage-and hour
 18 case, as well as the specific defenses asserted by Defendant. This case contained
 19 several inherent risks, some of which stemmed from previous rulings made by this

20
 21 ³ *Rodriguez v. West Publ'g Corp.*, 2007 WL 2827379, at *9 (C.D. Cal. Sept. 10, 2007) (approving
 22 settlement representing 30% of damages estimated by plaintiffs' expert); *In re Warfarin Sodium*
 23 *Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) ("The settlement amount of \$44.5 million
 24 represents more than 33% of the maximum possible recovery, a very reasonable settlement when
 25 compared with recovery percentages in other class actions."); *In Re Sunrise Secs. Litig.*, 131 F.R.D.
 26 450, 457 (E.D. Pa. 1990) (approving settlement that provided for only about 20% of damages as
 27 being "well within the range of reasonableness"); *In Re Armored Car Antitrust Litig.*, 472 F.Supp.
 28 1357, 1373 (N.D. 1979) (settlements with a value of 1% to 8% of the estimate total damages were
 approved); *Entin v. Barg*, 412 F.Supp. 508, 514 (E.D. Pa. 1976) ("Given these risks alone, we
 would find a recovery of 17% of the amount of 'guesstimated' alleged damages (and probably a
 much higher percentage of the true figure if it could be known) and about one third of the damages
 suffered by claim-filing Settlement Subclass Members to be within the range of reasonableness.");
In Re Four Seasons Secs. Laws Litig., 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving class
 settlement that was 8% of estimated total class damages).

1 Court regarding similar class claims. *See Nicole Torres et al v. Wells Fargo Bank,*
 2 *N.A. et al, supra*, Exhibit 2 to Righetti Decl. The *Torres* decision is significant
 3 because, there, this Court denied class certification where the plaintiff sought to
 4 certify a class based on the alleged underpayment of wage premiums. *Id.* The Court
 5 stated, “membership in a class that is entitled to wage premiums under Section 226.7
 6 necessarily requires an individualized inquiry into the underlying question of
 7 Defendant’s liability as to every class member.” *Id.* p. 4. Against the backdrop of
 8 this decision as well as other decisions denying certification of meal period claims,
 9 Plaintiff submits that the result achieved in this case is fair and reasonable, as
 10 Plaintiff and the class face the very real possibility of otherwise recovering nothing.

11 **2. The extensive informal discovery exchange between the**
 12 **parties enabled them to make informed decisions regarding**
 13 **settlement.**

14 The amount of discovery completed prior to reaching a settlement is important
 15 because it bears on whether the Parties and the Court have sufficient information
 16 before them to assess the merits of the claims. *See, e.g., Lewis v. Starbucks Corp.,*
 17 *No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008);*
 18 *Boyd v. Bechtel Corp., 485 F.Supp. 610, 617 (N.D. Cal. 1979).* Informal discovery
 19 serves the same purpose, and is a strong factor in favor of settlement approval so long
 20 as the Parties had an opportunity to “form a clear view of the strengths and
 21 weaknesses of their cases.” *Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443,*
 22 *454 (E.D. Cal. 2013).*

23 As discussed in detail above, the Parties engaged in extensive formal discovery
 24 before entering into settlement discussions. Once they commenced settlement
 25 discussions, the parties then engaged in an extensive informal information exchange.
 26 Through this formal and informal discovery, the Parties were able to accurately
 27 assess the claims and defenses, as well as the legal and factual issues that would arise
 28 if the case continued in litigation, and eventually proceeded to trial. In addition, in
 reaching this settlement, Class Counsel relied on their substantial litigation

1 experience in similar wage and hour class actions. Class Counsel's liability and
2 damages evaluation was premised on a careful and extensive analysis of the effects of
3 Defendant's compensation policies and practices regarding meal period entitlement
4 and premium pay. Ultimately, facilitated by experienced mediator Phyllis Cheng, the
5 Parties used this information and discovery to fairly resolve the litigation.

6 **3. Litigating this action not only would delay recovery, but**
7 **would be expensive, time consuming, and involve substantial**
8 **risk.**

9 The monetary value of the proposed Settlement represents a fair compromised
10 given the litigation risks and uncertainties posed by continued litigation. If this case
11 were to go to trial as a class action, Class Counsel estimates that fees and costs would
12 exceed extend into the hundreds of thousands of dollars. Litigating the class claims
13 would require substantial additional preparation and discovery. It would require
14 depositions of experts, the presentation of percipient and expert witnesses at trial, as
15 well as the consideration, preparation, and presentation of voluminous documentary
16 evidence and the preparation and analysis of expert reports. Recovery of the damages
17 and penalties previously referenced would also require 100% success as to each of
18 the meal periods identified in Defendant's records that began after the end of the fifth
19 hour of work, a questionable feat in light of recent developments in wage and hour
20 and class action law as well as the legal and factual grounds that Defendant has
21 asserted to defense this action. The primary obstacle being that Defendant's liability
22 for any of the meal periods in question would require an individualized inquiry into
23 the circumstances of that particular situation. In contrast, resolving this case by
24 means of an early settlement will yield a prompt, certain, and very substantial
25 recovery for the Settlement Class Members. Such a result will benefit the Parties and
26 the court system.

26 **4. The settlement is the product of informed, non-collusive, and**
27 **arm's-length negotiations between experienced counsel.**
28

Courts routinely presume a settlement is fair where it is reached through arm's-length bargaining. *See Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. Furthermore, where counsel are well-qualified to represent the proposed class and collective in a settlement based on their extensive class and collective action experience and familiarity with the strengths and weaknesses of the action, courts find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at *10; *Carter*, 2010 WL 1946784, at *8 ("Counsel's opinion is accorded considerable weight."). Here, the settlement was a product of non-collusive, arm's-length negotiations. The Parties participated in a full-day mediation before Phyllis Cheng, a Central District panel mediator with many years of experience in employment matters. In addition, the adversarial mediation resulted in a written memorandum of understanding that memorialized the core terms of the proposed settlement. Subsequently, the Parties spent months negotiating the long form settlement agreement, with several rounds of correspondence related to the details of the settlement.

D. The Class Representative Enhancement Payments are Reasonable.

Named plaintiffs in class action litigation are eligible for reasonable service awards. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).⁴ The enhancement payment of \$10,000.00 for Plaintiff is intended to compensate Plaintiff for the critical role he played in this case, and the time, effort, and risks undertaken in helping secure the result obtained on behalf of the Plaintiff Class. In agreeing to serve as Class Representative, Plaintiff formally agreed to accept the responsibilities

⁴ "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (approving \$300,000 payment to each class representative in pre-certification employment class settlement) (quoting *In Re S. Ohio Corr. Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)); *see also Roberts v. Texaco, Inc.*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to \$85,000 in pre-certification employment class settlement); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in class action).

1 of representing the interests of all Class Members. Defendant does not oppose
 2 payment of \$10,000.00 as a reasonable service award. Moreover, the service awards
 3 are fair when compared to the payments approved in similar cases. *See, e.g.,*
 4 *Contreras v. Bank of America*, No. CGC-07-467749 (San Francisco Cnty. Super. Ct.,
 5 Sept. 3, 2010) (approving \$10,000 service payment for each class representative).⁵

6 **E. The Requested Attorneys' Fees and Costs are Reasonable.**

7 In their fee motion to be submitted with the final approval papers, Class
 8 Counsel will request 25% of the Gross Settlement Amount, i.e. \$1,500,000.00) plus
 9 reimbursement of costs not to exceed \$18,500.00. The typical range of acceptable
 10 attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value,
 11 with 25% considered the benchmark. *Vasquez v. Coast Valley Roofing*, 266 F.R.D.
 12 482, 491-492 (E.D. Cal. 2010) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
 13 Cir. 2000); *Hanlon*, 150 F.3d at 1029; *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th
 14 Cir. 2003)). However, the exact percentage varies depending on the facts of the case,
 15 and in "most common fund cases, the award exceeds that benchmark." *Id.* (citing
 16 *Knight v. Red Door Salons, Inc.*, 2009 WL 248367 (N.D. Cal. 2009); *In re Activision*
 17 *Sec. Litig.*, 723 F.Supp. 1373, 1377-78 (N.D. Cal. 1989) ("nearly all common fund
 18 awards range around 30%")). In California, federal and state courts have customarily
 19 approved payments of attorneys' fees amounting to one-third of the common fund in
 20 comparable wage and hour class actions. *See Regino Primitivo Gomez, et al. v. H&R*

21
 22
 23 ⁵ *Castellanos v. The Pepsi Bottling Group*, No. RG07332684 (Alameda Cnty. Super Ct., March 11,
 24 2010) (approving service award of \$12,500 in a wage and hour class action settlement); *Novak v.*
 25 *Retail Brand Alliance, Inc.*, No. RG 05-223254 (Alameda Cnty. Super. Ct., Sept. 22, 2009)
 26 (approving service award of \$12,500 each to four class representatives in wage and hour class
 27 action); *Hasty v. Elec. Arts, Inc.*, No. CIV 444821 (San Mateo Cnty. Super. Ct., Sept. 22, 2006)
 28 (approving an award of \$30,000 to the class representative in a wage and hour class action);
Meewes v. ICI Dulux Paints, No. BC265880 (Los Angeles Cnty. Super. Ct. Sept. 19, 2003)
 (approving service awards of \$50,000, \$25,000 and \$10,000 to the named plaintiffs); *Mousai v. E-*
Loan, Inc., No. C 06-01993 SI (N.D. Cal. May 30, 2007) (approving service award of \$20,000 in
 wage and hour case).

1 *Gunlund Ranches, Inc.* 2011 WL 5884224, No. CV F 10–1163 LJO MJS. (E.D. Cal.
 2 2011) (approving attorneys’ fees award equal to 45% of the settlement
 3 fund).⁶

4 In this case, given the results achieved, the effort expended litigating the case,
 5 and the difficulties attendant to litigating this case, Plaintiff will request the
 6 benchmark of 25% of the Gross Settlement fund, or \$1,500,000.00. There was no
 7 guarantee of compensation or reimbursement. Rather, counsel undertook all the risks
 8 of this litigation on a completely contingent fee basis. These risks were front and
 9 center. Defendant’s vigorous and skillful defense further confronted Class Counsel
 10 with the prospect of recovering nothing or close to nothing for their commitment to
 11 and investment in the case.

12 Nevertheless, Plaintiffs and Class Counsel committed themselves to
 13 developing and pressing Plaintiff’s legal claims to enforce the employees’ rights and
 14 maximize the class recovery. During the litigation, counsel had to turn away other
 15 less risky cases to remain sufficiently resourced for this one. The challenges that
 16 Class Counsel had to confront and the risks they had to fully absorb on behalf of the
 17 class are precisely the reasons for benchmarks and multipliers in contingency fee
 18 cases. *See, e.g., Noyes v. Kelly Servs., Inc.*, 2:02-CV-2685-GEB-CMK, 2008 WL
 19 3154681 (E.D. Cal. Aug. 4, 2008)(quoting *Ketchum*, 24 Cal.4th at 1132-33); Posner,
 20 *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) (“A contingent fee must be
 21 higher than a fee for the same legal services paid as they are performed... because the
 22
 23

24 ⁶ *Wren v. RGIS Inventory Specialists*, WL 1230826, (N.D.Cal.,2011) (approving attorneys’ fee
 25 award of just under 42% of common fund); *Big Lots Overtime Cases* (San Bernardino Super. Ct.,
 26 JCC Proceeding No. 4283, February 4, 2004) (approving award of attorneys’ fees of 33% of the
 27 recovery); *Barela v. Ralph’s Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5,
 28 1998) (same); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26,
 2000) (same); *Ellmore v. Ditech Funding Corp.* (C.D. Cal., No. SAVC 01-0093, Sept. 12, 2002)
 (same); *Miskell v. Automobile Club of Southern California* (Orange County Super. Ct., No.
 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases* (Los Angeles Super. Ct., JCC
 Proceeding No. 2085, March 24, 1992) (same).

1 risk of default (the loss of the case, which cancels the debt of the client to the lawyer)
 2 is much higher than that of conventional loans”).

3 Attorneys who litigate on a wholly or partially contingent basis expect to
 4 receive significantly higher effective hourly rates in cases where compensation is
 5 contingent on success, particularly in hard-fought cases where, like in the case at bar,
 6 the result is uncertain. This does not result in any windfall or undue bonus. In the
 7 legal marketplace, a lawyer who assumes a significant financial risk on behalf of a
 8 client rightfully expects that his or her compensation will be significantly greater than
 9 if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the
 10 greater the risk, the greater the “enhancement.” Adjusting court-awarded fees upward
 11 in contingent fee cases to reflect the risk of recovering no compensation whatsoever
 12 for hundreds of hours of labor simply makes those fee awards consistent with the
 13 legal marketplace, and in so doing, helps to ensure that meritorious cases will be
 14 brought to enforce important public interest policies and that clients who have
 15 meritorious claims will be better able to obtain qualified counsel. Plaintiff will
 16 present the points and authorities in support of a request for attorneys’ fees no later
 17 than 14 days prior to the deadline for Plaintiff Class Members to request exclusion or
 18 object to the Settlement.

19 **F. The Proposed Notices and Claims Process Are Reasonable.**

20 The Court must ensure that Plaintiff Class Members receive the best notice
 21 practicable under the circumstances of the case. *See Phillips Petroleum Co. v. Shutts*,
 22 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75
 23 (1974). Procedural due process does not guarantee any particular procedure but
 24 rather requires only notice reasonably calculated “to apprise interested parties of the
 25 pendency of the action and afford them an opportunity to present their objections.”
 26 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Silber v.*
 27 *Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). A settlement notice “is satisfactory if it
 28 ‘generally describes the terms of the settlement in sufficient detail to alert those with

1 adverse viewpoints to investigate and to come forward and be heard.”” *Churchill*
2 *Village LLC v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

3 The Class Notice, attached respectively as **Exhibit A** to the Settlement
4 Agreement, and manner of distribution negotiated and agreed upon by the Parties is
5 “the best notice practicable.” FED.R.CIV.P. 23(c)(2)(B). All Plaintiff Class Members
6 have been identified and the Class Notice will be mailed directly to each Plaintiff
7 Class member. In addition, the proposed Notice is clear and straightforward, and
8 provides information on the meaning and nature of the class definitions, the class
9 action, the terms and provisions of the Settlement Agreement, and the monetary
10 awards that the Settlement will provide.

11 The proposed Notice also fulfills the requirement of neutrality in class notices.
12 See CONTE & NEWBERG at § 8.39. They summarize the proceedings necessary to
13 provide context for the Settlement Agreement and summarize the terms and
14 conditions of the settlement, including an explanation of how the settlement amount
15 will be allocated between the named Plaintiffs, Class Counsel, the Settlement
16 Administrator, and the Settlement Class Members, in an informative, coherent and
17 easy-to-understand manner, all in compliance with the Manual for Complex
18 Litigation’s recommendation that “the notice contain a clear, accurate description of
19 the terms of the settlement.” MANUAL FOR COMPLEX LITIG. at § 21.312.

20 The Class Notice clearly explains the procedures and deadlines for requesting
21 exclusion from the Settlement, objecting to the estimated award, the consequences of
22 taking or foregoing the various options available to Class members, and the date,
23 time and place of the final settlement approval hearing. Pursuant to Rule 23(h), the
24 proposed Class Notice also sets forth the amount of attorneys’ fees and costs sought
25 by Plaintiff, as well as an explanation of the procedure by which Class Counsel will
26 apply for them. In addition, the Class Notice explains that Class members have the
27 opportunity to object to Class Counsel’s motion for attorneys’ fees and costs. The
28 Class Notice clearly states that the settlement does not constitute an admission of
liability by Defendant. It makes clear that the final settlement approval decision has

1 yet to be made. Accordingly, the Class Notice complies with the standards of
2 fairness, completeness, and neutrality required of a settlement class notice
3 disseminated under authority of the Court. CONTE & NEWBERG at §§ 8.21 and
4 8.39; MANUAL FOR COMPLEX LITIG. at § 21.311 and 21.312.

5 Furthermore, reasonable steps will be taken to ensure that all Plaintiff Class
6 Members receive the Notices. Before mailing, Defendant shall provide to KCC a
7 database that contains the last-known name, mailing address, and Social Security
8 Number for all Plaintiff Class Members along with their qualifying workweeks for
9 calculating their respective monetary recovery. The Settlement Administrator shall
10 use one or more commercially-reasonable skip tracing methods to update the contact
11 information in the Database. Within 10 calendar days of receipt of the Database from
12 Defendant, KCC will mail the Class Notice to each Plaintiff Class member. With
13 respect to Class Notices returned as undeliverable, KCC will promptly attempt to
14 obtain a valid mailing address by use of one or more skip trace databases such as the
15 Equifax, National Change of Address (“NCOA”) database search, and skip trace. If
16 another address is identified, KCC will send the Class Notice to the new address.
17 Class members will have 45 days from the mailing of the Class Notice to opt-out,
18 object to the Settlement, or dispute the information shown on his or her Class Notice.
19 Any Plaintiff Class Member who fails to submit a timely request to exclude
20 themselves from the Settlement will be deemed a Settlement Class Member whose
21 rights and claims are determined by any order the Court enters granting final
22 approval, and any judgment the Court ultimately enters in the case.

23 Because the proposed Notice clearly and concisely describes the terms of the
24 Settlement and the obligations of Settlement Class Members who participate, and
25 because the Notice will be disseminated in a way calculated to provide notice to as
26 many Class Members as possible, the Class Notice should be preliminarily approved.
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28

